

October 12, 2005

Craig M. Wilson  
*[Address Redacted]*  
Carmichael, CA 95608

**Re: Your Request for Advice  
Our File No. A-05-181**

Dear Mr. Wilson:

This letter is in response to your request on behalf of yourself for advice regarding the revolving door provisions of the Political Reform Act (the “Act”).<sup>1</sup>

### **QUESTIONS**

1. As the former Chief Counsel of the State Water Resources Control Board, may you make appearances in your private sector position before personnel of the Regional Water Boards?

2. Does the term “administrative action” in the Act’s one-year ban on communicating with one’s former state agency include enforcement actions and planning activities?

3. Does signing a letter or communicating via telephone or at informal meetings with former agency staff constitute an “appearance” before your former agency?

### **CONCLUSIONS**

1. Yes.

2. No.

3. Yes.

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<sup>1</sup> Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

## FACTS

You were recently employed as the Chief Counsel of the State Water Resources Control Board. You retired in September and you are now employed with a private law firm.

You state that, per Water Code section 186, the legal counsel of the State Water Board advises the state board and also furnish legal services to the Regional Water Boards upon their request. Citing Water Code provisions, you indicate the regional boards are separate state agencies that take both quasi-legislative and quasi-judicial actions to protect water quality. Those actions may be appealed to the State Water Board. Because of this appellate process, the State Water Board's Office of Chief Counsel is organized to separate the attorneys who work with the Regional Water Boards from the attorneys who represent the State Water Board. As Chief Counsel to the State Water Board, you do not have any involvement with Regional Water Board actions.

According to the facts you provided, the regional boards engage in enforcement and "planning" activities. "Planning activities" means the processes by which the local regional boards adopt water quality control plans for areas within their region. These plans are policy roadmaps that guide the region's water policies with respect to development of resources, permissible levels of contaminants, and permit requirements, for instance. The regional boards adopt plans pursuant to appropriate notice and public hearing procedures. You indicated these are much like "general plans" adopted by local governments which set development policies for a given region.

## ANALYSIS

The questions posed in your letter concern the post-governmental employment restrictions, otherwise known as "revolving door" laws. The Act places certain restrictions on individuals who have recently left state service and who wish to use the expertise and relationships they developed at their former agency for compensation by third persons. (§§ 87400 - 87407.) We have enclosed a fact sheet that outlines the provisions of the revolving door laws and gives more detail on the specifics of the various provisions. Because your questions target specific areas within those provisions, we narrow the analysis of this letter to answer only those questions you have posed.

### *Question 1.*

Your first question asks whether you may make appearances before members and staff of the regional water quality control boards.

### **The One-Year Ban - "Revolving Door"**

Section 87406 of the Act prohibits specified officials, for one year after leaving state service, from being paid to communicate with their former agency in an attempt to

influence agency decisions that involve the making of general rules or to influence certain proceedings involving a permit, license, contract, or transaction involving property or goods. (See also regulations 18746.1 and 18746.2.)

Section 87406, subdivision (d)(1), of the Act provides, in pertinent part, that no officer or designated employee of a state administrative agency:

“[F]or a period of one year after leaving office or employment, shall, for compensation, act as agent or attorney for, or otherwise represent, any other person, by making any formal or informal appearance, or by making any oral or written communication, before any state administrative agency, or officer or employee thereof, for which he or she worked or represented during the 12 months before leaving office or employment, if the appearance or communication is made for the purpose of influencing administrative or legislative action, or influencing any action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property. For purposes of this paragraph, an appearance before a state administrative agency does not include an appearance in a court of law, before an administrative law judge, or before the Workers’ Compensation Appeals Board....”

Your question seeks guidance as to whether the various regional water quality control boards constitute the same “agency” as the state water board, with which you were employed. In the *Grimm* Advice Letter, No. I-96-114, we advised that for purposes of the one-year ban the state board and the regional boards are separate state agencies.

Thus, because you were not employed by the regional boards and because you did not represent them in your position as Chief Counsel for the state board, section 87406 does not prevent you from appearing before the regional boards in your new employment.

*Question 2.*

Your second question asks whether the term “administrative action” in the Act’s one-year ban on communicating with one’s former state agency include enforcement actions and planning activities.

“Administrative action” is defined in section 82002 as “the proposal, drafting, development, consideration, amendment, enactment or defeat by any state agency of any rule, regulation or other action in any rate-making proceeding or any quasi-legislative

proceeding.” Regulation 18202 provides that an enforcement proceeding is not a quasi-legislative proceeding. (Reg. 18202; *Ordos* Advice Letter, No. A-95-052.)

According to the facts you provided, “planning activities” means the processes by which the local regional boards adopt water quality control plans for areas within their region. These plans are policy roadmaps that guide the region’s water policies with respect to development of resources, permissible levels of contaminants, and permit requirements, for instance. The regional boards adopt plans pursuant to appropriate notice and public hearing procedures. You indicated these are much like “general plans” adopted by local governments which set development policies for a given region.

Without a specific plan and set of activities to observe, we can only give informal advice and observe the general proposition that city adoption of general plans are not usually considered “administrative action.” Because the planning activities you describe do not appear to constitute “the proposal, drafting, development, consideration, amendment, enactment or defeat by any state agency of any rule, regulation or other action in any rate-making proceeding or any quasi-legislative proceeding,” it appears such activities do not constitute “administrative action” for purposes of the one-year ban.

### *Question 3.*

Because your situation is governed by section 87406, subdivision (d)(1), you may not make any appearance or communication before the state board for a period of one year after the date you left employment with that agency. An appearance or communication includes, but is not limited to, conversing by telephone or in person, corresponding with in writing or by electronic transmission, attending a meeting, and delivering or sending any communication. (Reg. 18746.2, subd. (a).) Accordingly, you may not identify yourself on any document submitted to the state board. You may, however: (1) participate as a panelist or formal speaker at a conference or similar public event for educational purposes or to disseminate research when the subject matter does not pertain to a specific action or proceeding; (2) attend a general informational meeting, seminar, or similar event; (3) request information concerning any matter of public record; or (4) communicate with the press. You may also use your expertise to advise your new clients so long as you are not identified with your employer’s efforts to influence the agency. (*Perry* Advice Letter, No. A-94-004.)<sup>2</sup>

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<sup>2</sup> Mere inclusion of your name on standard letterhead, however, would not constitute a prohibited appearance or communication. (*Davidian* Advice Letter, No. A-97-076a.)

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca  
General Counsel

By: C. Scott Tocher  
Senior Counsel, Legal Division

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